IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1956.

No. 313

BROTHERHOOD OF RAILROAD TRAINMEN, etc., et al.,

Petitioners,

vs.

CHICAGO RIVER AND INDIANA RAILROAD COMPANY, et al.,

Respondents.

PETITION OF BROTHERHOOD OF RAILROAD TRAINMEN, ETC., ET AL., FOR REHEARING.

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Petitioners, Brotherhood of Railroad Trainmen, *et al.*, pray that this court grant rehearing with respect to its decision of March 25, 1957, in this case because:

The present opinion rests upon a view of the "finality" and "binding character" of awards of the Adjustment Board, which view was not urged or considered by either party or expressed by the lower courts. The view expressed by the court is contrary to the terms of the Act and to all of the lower courts' decisions on the point.

The basic ground upon which this court decided this case was not apprehended or discussed by either petitioners or

respondents and was not involved in the considerations or decisions of the lower courts.

This unanticipated basis for the court's decision is the court's declaration that "minor grievances", once submitted by either party to the Adjustment Board, entail compulsory arbitration with resulting awards that are, so the present opinion says, "*final* and binding upon both parties to the disputes", wherefor, so the court's presently standard opinion reasons, the statute prohibits strikes over matters pending before the Adjustment Board. But Section III First (m) of the Railway Labor Act provides and the courts have consistently interpreted the Act as providing that when judicial proceedings are brought for the enforcement of an award, such awards "shall be final and binding upon both parties to the dispute *except insofar as they shall contain a money award.*" The foregoing italicized language of the Act is omitted from the court's quotations of the text and, we believe, from the reasoning that finds utterance in the present opinion.

The claims involved in the dispute in the instant case and in No. 702 were claims for money which, if they should result in sustaining awards of the Board, would contain a money award.

The result of the Court's presently standing opinion is that where a claim for monetary payment is determined in favor of the *employee*, the award is "a money award", and hence is *not* final, but is judicially reviewable. Where, however, the award is in favor of the Railroad Company, it is *not* "a money award" and is *not* judicially reviewable.

It is thus apparent that the Railway Labor Act as expounded by the Court's present opinion does not operate with equal finality upon employer and employee.

That awards for money are reviewable, not only as to the amount of the award, but as to the propriety of any award,

has been constantly recognized by lower Federal Courts; for example:

Thomas v. New York Central & St. Louis R. Co., 185 F. 2d 614 (6th Cir.).
Dahlberg v. Pittsburg & L. E. R. Co., 138 F. 2d 121 (3rd Cir.).
Washington Terminal Co. v. Boswell, 124 F. 2d 235 (App. D. C.); Cert. den. 315 U. S. 795.
Crist v. Public Belt R. R. Co., 93 F. Supp. 103.
Berryman v. Pullman Co., 48 F. Supp. 542.

Moreover, the Court's present opinion, especially when considered in the light of the Court's decision in *Manion* v. *Kansas City Terminal Railway Co.*, No. 702, treats as paramount the question whether a "minor grievance" has or has not been submitted to the Adjustment Board. In the present case, the Court sustains an injunction restraining strikes over "minor grievances" submitted to that Board. In the *Manion* case, where the grievances had not been submitted to the Board, the Court has vacated the lower court's opinion.

The result of the court's opinion in this and the *Manion* cases is to intimate, without declaring, that the question whether strikes over "minor grievances" may be restrained depends upon whether such grievances have been submitted to the Board.

The net effect of the present opinion will be a deluge of minor claims submitted to the Board, merely to lay the ground work for the injunction of a strike. The result of this avalanche of minor claims will be to submerge the Board in a morass of altercations that its members simply cannot handle with the expedition and dispatch contemplated by the Railway Labor Act and essential for the functioning of that legislative measure.

In the light of these considerations, Petitioners earnestly seek this Court's re-hearing.

Respectfully submitted,

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CERTIFICATE OF GOOD FAITH UNDER RULE 58

William C. Wines, a member of the bar of this Court and of Counsel in this case, certifies that this Petition is presented in good faith and not for delay.

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William C. Wines